



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS
SECRETARY FOR
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ARNOLD SCHWARZENEGGER
GOVERNOR

Certified Mail: 7003 1680 0000 6167 6940

March 22, 2010

Mr. Howard Wines, Director
Bakersfield City Fire Department
900 Truxton Avenue, Suite 210
Bakersfield, California 93301

Dear Mr. Wines:

The California Environmental Protection Agency (Cal/EPA) and the Office of the State Fire Marshal conducted a program evaluation of the Bakersfield City Fire Department Certified Unified Program Agency (CUPA) on February 23 and 24, 2010. The evaluation was comprised of an in-office program review by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that Bakersfield City Fire Department's program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Ernie Genter every 90 days after the evaluation date; the first report is due on May 25, 2010.

Cal/EPA also noted during this evaluation that Bakersfield City Fire Department has worked to bring about a number of local program innovations, including an aggressive and comprehensive self-certification program for universal waste management and one of the first jurisdictions fully implement a paperless electronic reporting program. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program website to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by e-mail at jbohon@calepa.ca.gov.

Sincerely,

[Original Signed by Don Johnson]

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosure

cc: Sent via e-mail:

Mr. Ernest Genter
Cal/EPA Unified Program
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Ms. Terry Brazell
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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS

CUPA: Bakersfield City Fire Department

Evaluation Date: February 23 and 24, 2010

EVALUATION TEAM

Cal/EPA: Ernie Genter
OSFM: Jennifer Lorenzo

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Ernie Genter at (916) 327-9560.

	<u>Deficiency</u>	<u>Preliminary Corrective Action</u>
1	<p>Although the CUPA is submitting all surcharge funds, they are not transmitting them within the required frequency. The CUPA is submitting the surcharge to the state annually rather than quarterly as required under Title 27.</p> <p>CCR, Title 27, Section 15250(b)(1) [Cal/EPA]</p>	<p>By July 31, 2010, the CUPA will transmit the surcharges collected during the fourth fiscal quarter. In addition the CUPA will continue to transmit collected state surcharges quarterly, within 30 days of the end of each state fiscal quarter.</p>
2	<p>The CUPA is unable to document that all facilities that received a notice to comply citing minor violations have returned to compliance within 30 days of notification. Either the business must submit a Return to Compliance (RTC) Certification in order to document its compliance or in the absence of certification the CUPA must re-inspect the business or use a follow-up process to confirm that compliance has been achieved.</p> <p>This is a repeat deficiency from the 2007 evaluation. A RTC form was developed and submitted, and was demonstrated to be in use for correction of the previous deficiency. However, review of files could not verify RTC for the majority of businesses with violations noted during inspections.</p> <p>HSC section 25187.8 (g)(1) HSC section 25404.1..2 [Cal/EPA]</p>	<p>The CUPA will review and follow its Inspection and Enforcement (I&E) Program Plan. By August 23, 2010, please send examples of RTC or complete follow-up reports for each of the program elements.</p>

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<p style="text-align: center;">3</p>	<p>The CUPA has not submitted quarterly inspection or enforcement reports for RCRA LQG's since the third quarter of 2008. The last LQG report received DTSC from the City of Bakersfield CUPA was for the third quarter of 2008, covering July through September 2008.</p> <p>As a reminder, the reports must be submitted to DTSC quarterly, on February 1, May 1, August 1, and October 15 of each for the preceding quarter (Oct-Dec, Jan-Mar, Apr-Jun, and Jul-Sep, respectively). If the CUPA did not do any inspections or take any enforcement at a RCRA LQG facility, please submit a notice letting DTSC know that the CUPA did not have any activities to report by sending an e-mail to Asha Arora at aarora@dtsc.ca.gov.</p> <p>A form (reporting format) has been provided.</p> <p>The CUPA may alternatively enter requested information in Cal/EPA's Unified Program Data System (UPDS). https://securecupa.calepa.ca.gov/UPDS/Web/Forms/Public/Login.aspx</p> <p>HSC, Chapter 6.5, Section 25187(m) CCR, Title 27, Section 15290(g)[DTSC]</p>	<p>By August 1, 2010 the CUPA will submit a LQG report covering activities since September 2008. The CUPA will also ensure that all future LQG reports are submitted to the State quarterly as required.</p>
<p style="text-align: center;">4</p>	<p>The CUPA is not fully implementing its fee accountability program, which is impacting the CUPA's ability to adequately administer the Unified Program (UP) in the City of Bakersfield.</p> <p>A combination of events and actions are collectively the cause of this situation. The CUPA's operations are deficient in the following areas:</p> <ol style="list-style-type: none"> 1. Single fees collected and earmarked solely for UP-related activities appear to exceed expenses for the current CUPA staffing levels. Pursuant to state law, the UP single fee revenues are required to be used for the sole purpose of funding the necessary and reasonable costs incurred by the CUPA in their administration of the UP in the City of Bakersfield. The following situations support this finding: <ul style="list-style-type: none"> • Two CUPA inspector positions remain unfilled to meet departmental wide and general fund reductions in force. These 	<p>Cal/EPA strongly advises the CUPA to change their financial management practices by incorporating UP single fees revenues into a "Special Fund". The establishment of this Special Fund for UP revenues will result in a more efficient and cost-effective operation of the UP in the City of Bakersfield.</p> <p>By August 24, 2010, the CUPA will report to Cal/EPA the status of their efforts to fully manage and control UP staff resources. This maybe accomplished by either ensuring UP staff positions are filled to perform only UP activities or by adjusting the single fee and fee accountability systems to reflect the allocation of these staff to other non-UP activities.</p> <p>By August 24, 2010, the CUPA will develop and implement a plan to adequately account for all UP revenues.</p>

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	<p>positions were fully funded through the CUPA's single fee revenues.</p> <ul style="list-style-type: none">• Cal/EPA has discovered that three support positions, which were part of the CUPA's UP organization, have been reallocated to other city positions to meet departmental wide and general fund reductions in force while the positions remain fully funded through the CUPA's single fee revenues. <p>2. Some positions that were funded by and allocated to the UP are no longer available to the UP, impacting the CUPA's administration of the UP in the City of Bakersfield. Reassignment of staff, as depicted above, has left the CUPA with insufficient resources to perform activities necessary to effectively and efficiently administer the UP. Specific program areas impacted include the reduction of:</p> <ul style="list-style-type: none">• Critical support staff resources that has resulted in backlog in entering data into the CUPA's data systems, distribution of self-certification information and reminders, online business data (CERS) verification requests and reminders, fee collection, RTC billing, surcharge processing and submittal to the State, and ensuring critical hazardous materials information is accurate and immediately available to emergency response personnel;• Technical staff resources due to unfilled or eliminated positions. This reduction of UP staff availability has resulted in a decrease in productivity, such as the identification of new qualified businesses, hazardous waste generator inspections, tracking Return to Compliance, violation failure to comply follow up (re-inspections), timely implementation of a graduated series of enforcement (including AEOs), and the overall management duties assigned to Technical staff.	
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	<p>3. The UP single fees collected from regulated businesses are not fully accounted for to the CUPA Manager. These revenues are deposited and maintained in the City General Fund and not a Special Fund. Therefore, the CUPA Manager is unable to provide complete fee accountability for the UP revenues and expenditures, as mandated by state law. The following reasons are provided to support the CUPA's establishment of a "Special Fund" to account and management UP revenues:</p> <ul style="list-style-type: none">• Co-mingling of the UP "special fund" revenues with the General Fund significantly increases the risk of misallocation of the UP funds.• Financial management provisions in both the City's budget and Municipal Code concerning the management of General Fund revenues and expenditures are more flexible than provisions that govern the management "Special Funds." <p>HSC, Chapter 6.11, Sections 25404.1.1(i) and 25404.5(c) CCR, Title 27, Section 15210 (b) [Cal/EPA]</p>	
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CUPA Representative

Howard Wines

(Print Name)

Original Signed

(Signature)

Evaluation Team Leader

Ernie Genter

(Print Name)

Original Signed

(Signature)

Certified Unified Program Agency (CUPA)
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PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.

1. **Observation:** Components of the Inspection and Enforcement Plan (I&E Plan) are scattered among several different binders and documents, making it difficult to find and review them. It also appears that the plan has not been reviewed in whole annually and some portions could use updating to be consistent between various components, such as inspection frequencies and all available enforcement options,.

Recommendation: Cal/EPA recommends that the CUPA completely review and update their I&E Plan. Cal/EPA also recommends that the I&E Plan have all components incorporated to ease annual review and update as necessary and to provide a single reference document to provide inspection and enforcement program consistency between UP staff and training for new employees. Major components or guidance documents can still be clearly referenced in the I&E Plan. Most, if not all, referenced documents should be included in a single file or binder to improve accessibility.

2. **Observation:** Now that the CUPA is fully implementing CERS data base with all business plan information being updated and filed electronically, there are some questions regarding a mechanism for completing or submitting the annual inventory certification and tri-annual business plan certification, as well as submittal and filing of the emergency response and training plans.

Recommendation: Cal/EPA recommends that the CUPA develop a written process for handling submission of data into CERS and how the data base will be managed. This will also be a requirement of the upcoming Electronic Reporting Grant Application process.

3. **Observation:** Many files within the LaserFische database system have been misfiled or misplaced in the incorrect program element. Inspection reports were also difficult to locate within each folder. Many scanned documents were duplicated within a folder or in other folders. Some of the files not found were in transition.

Recommendation: Cal/EPA recommends that the CUPA develop a mechanism to search for a file by facility or business name within the LaserFische program. It would also be useful to be able to search or sort files by applicable program elements (similar to Permit to Operate Codes).

4. **Observation:** The CUPA fee collection rates have declined from 98.6%, to 95.4%, to 89.6% over the past three years. The 10.4% not collected in FY 08/09 represented \$59,633.

Recommendation: Cal/EPA recommends that the CUPA refill or replace support staff positions (see deficiency 4 above) to improve tracking of payment and subsequent collection attempts.

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5. **Observation:** Aboveground storage tanks information on the CUPA's website needs to be updated. For instance, the following statement is shown: "Spill Prevention Control and Countermeasure plan (SPCC) may be required by Cal EPP."

Recommendation: Cal/EPA recommends that the CUPA review the information on their website to ensure the information is current and accurate, including, but not limited to, revising the above statement as or similarly stated as, "A Spill Prevention Control and Countermeasure (SPCC) Plan may be required to be developed and implemented by an aboveground petroleum storage tank facility owner or operator." A facility storing petroleum products with a cumulative storage capacity greater than or equal to 1,320 gallons must prepare and implement an SPCC Plan. Each tank or container must meet the minimum container size of 55 gallons

6. **Observation:** The CUPA's inspection frequency schedule shows "no mandated frequency" for the hazardous waste generator and tiered permit programs (PBR, HHW, CA and CE).

Recommendation: DTSC recommends that the CUPA revise their HWG inspection frequency to reflect correct inspection frequency, which is at least once every three years per Health and Safety Code section 25201.4 (b)(2). In addition, for programs that actually do not have a mandated inspection frequency (hazardous waste generators, RCRA LQG, and recyclers), the CUPA must have an alternative inspection frequency consistent throughout the CUPA's I&E Plan and procedures.

7. **Observation:** The CUPA's Business Plan and Inventory Program Inspection Checklist does not provide a place for consent to inspect. Citations to laws and regulations are not provided on all checklists reviewed in the facility files. There is also no place for classification of violations as Class I, II or minor. However, the CUPA's new Hazardous Waste Generator Inspection Checklist provides a place for consent, for classifying violations according to Class I, II, or Minor, reference to statutes or regulations, timeframe for corrective action, and also a signature block for self-certification of minor violations.

Recommendation: Cal/EPA recommends that the CUPA be consistent in all its inspection reports and provide additional elements that are found in its new hazardous waste generator inspection checklist. Documentation of consent serves to strengthen any potential enforcement case defeating any potential challenge that the fourth amendment may have been abridged. In addition, alleged violations should be accompanied by a statutory or regulatory citation. Classification of violations will assist with accurate reporting on Annual Enforcement Summary Report (Report 4) and assure consistent and appropriate enforcement actions for all violations.

8. **Observation:** According to the CUPA's procedure manual, the Spill Prevention Control and Countermeasure (SPCC) Plan section (Item 14 of procedure manual) states outdated information regarding the applicability and verification. For example: "Tank facilities with capacities between 660 and 10,000 gallons should be referred to the Central Valley Regional Water Quality Control Board for their determination of SPCC applicability."

Recommendation: Cal/EPA recommends that the CUPA update the information that is consistent with the current requirements of Aboveground Petroleum Storage Act.

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EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. **General Program Implementation** – In addition to implementing the Unified Program within the City of Bakersfield, the Office of Fire Prevention Services is also responsible for fire prevention, emergency response, and oversight of cleanup on soil-only impacted sites. Despite experiencing drastic staffing shortages within the last three fiscal years, the CUPA has been able to maintain the inspection frequencies in all Unified Program elements.
2. **Outreach/Education** – The CUPA conducted a joint UST workshop with the Kern County CUPA during FY 2007-2008 for UST owners and operators. The CUPA partnered with the California State University Bakersfield (CSUB) and sent notifications to all regulated facilities for an E-Waste event held at CSUB on January 12, 2008. The CUPA also has an aggressive and comprehensive self-certification program for universal waste management, which was implemented during FY 2008-2009. A self-certification checklist was mailed to approximately 3,000 non-CUPA regulated facilities in order to extend universal waste management outreach even beyond the CUPA program.
3. **Enforcement** – The CUPA has initiated several formal enforcements within the last three fiscal years, as depicted below. In addition to enforcing the Unified Program laws and regulations under the Health and Safety Code and California Code of Regulations, the CUPA has also used its authority under the fire code to enforce the management of hazardous materials. The CUPA has recently filled its Hazardous Materials Specialist position and this individual has been able to devote time to initiating, tracking, and following up on formal enforcements.
 - a. One administrative Enforcement Order (AEO) against a hazardous waste generator facility during FY 2006-2007.
 - b. Nine AEOs against UST facilities during FY 2008-2009.
 - i. USA Liquor at 1720 South Union Avenue for disabling or tampering with the automatic leak detection system
 - ii. Gas N Save at 830 Union Avenue for cathodic protection failure
 - iii. J & J Oil Group Inc. at 2612 Buck Owens Boulevard for installing a vapor processing unit without a valid UST modification permit
 - iv. Sullivan Petroleum at 2317 L Street for disabling or tampering with the automatic leak detection system
 - v. Sullivan Petroleum at 6009 Coffee Road for disabling or tampering with the automatic leak detection system
 - vi. Stine Road Chevron at 5609 Stine Road for installing a vapor processing unit without a valid UST modification permit
 - vii. Rich Environmental #1 and #2 at Union Avenue and Stine Road for installing a vapor processing unit without a valid UST modification permit
 - viii. Brookside Market at 8803 Camino Media for disabling or tampering with the automatic leak detection system
 - c. At least six AEOs during the current fiscal year (2009-2010).
 - i. USA Liquor at 1720 South Avenue for failure to maintain records and disabling or tampering with the automatic leak detection system
 - ii. GASCO Gas at 100 South Oswell Avenue for disabling or tampering with the automatic leak detection system

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- iii. One Stop Mobil at 402 South Chester Avenue for installing a vapor processing system without a valid UST modification permit
- iv. One Stop Shell at 349 Union Avenue for failure to maintain records
- v. Franzen Hill Corporation at One Stop Hill Mobil at 402 South Chester Avenue for installing a vapor processing system without a valid UST modification permit
- vi. Ennis Paint, Inc., at 200 East 21st Street for unauthorized discharge of hazardous material

4. Electronic Reporting – The CUPA has fully converted its DOS-based SEED database to the Unidocs on-line reporting system. All hazardous material business plan data was transferred into Unidocs in preparation for the conversion of Unidocs into the California Environmental Reporting System (CERS). The CUPA's IT department has transferred the business owner and chemical inventory information from the previous database management system into Unidocs for approximately 1,300 businesses regulated by the CUPA. Immediately thereafter, the CUPA sent a mass mailing to the businesses instructing them to log onto Unidocs.org and update or validate the information on-line.